United Nations S/2005/441

Security Council

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7 July 2005

Original: English

Letter dated 6 July 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 16 December 2004 (S/2004/998). The Counter-Terrorism Committee has received the attached fourth report from Uruguay submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 5 July 2005 from the Chargé d'affaires a.i. of the Permanent Mission of Uruguay to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: Spanish]

I have the honour to refer to your letters of 22 October 2004 and 6 May 2005 concerning the submission of Uruguay's fourth report, pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

(*Signed*) Susana **Rivero**
Chargé d'affaires a.i.

Enclosure*

Fourth report of Uruguay prepared jointly by the competent authorities pursuant to paragraph 6 of resolution 1373 (2001) of the Security Council

[Original: Spanish]

After evaluating the earlier reports of Uruguay prepared pursuant to paragraph 6 of resolution 1373 (2001), the Counter-Terrorism Committee of the Security Council has requested the Government of Uruguay to provide additional information regarding the matters listed below. The replies of the Government follow each question.

1. Implementation measures

1.1 ***Question: With regard to the implementation of paragraph 1 of the resolution, Uruguay states in its third report that "a bill is being drafted on the strengthening of the (financial) system for the prevention and control of money-laundering and the financing of terrorism". The Committee would appreciate receiving a progress report concerning this matter. In addition, the Committee refers Uruguay to the questions relating to this legislation contained in its previous letter, dated 4 April 2003, and requests Uruguay to respond to these questions at its earliest possible convenience.***

Reply

Uruguay has the honour to inform the Committee that the aforementioned bill was promulgated as Act No. 17,835 on 23 September 2004. The Act, a copy of which is enclosed herewith, has thus become part of the body of laws of Uruguay. It should be noted that the representatives present in both houses of the legislature voted unanimously in favour of the Act, and no negative comments were voiced about it. This demonstrates the political will and general consensus inspired by the Act.

By Decree No. 86/2005, of 24 February 2005, regulations implementing the Act were adopted. A copy of the regulations is enclosed with the present report.

1.2 ***Question: The Committee would like to receive a copy of the guidelines issued by the Central Bank that were mentioned in Uruguay's report (Communication 2002/198 of 4 November 2002).***

Reply

As requested previously, the text of Communication 2002/198 from the Central Bank of Uruguay is attached.

Uruguay wishes to report that Communication 2005/094, issued on 9 February 2005, builds upon the above-mentioned instrument by establishing specific guidelines for financial institutions regarding procedures to be followed when suspicious transactions are reported.

* Annexes are on file with the Secretariat and are available for consultation.

The Communication in question is attached, along with the forms that must be filled out in such cases.

1.3 ***Question: Regarding the effective implementation of paragraph 1 of the resolution, according to the information provided in Uruguay's reports, the monitoring of charitable organizations or entities of a similar nature appears to be insufficient to meet the obligations under the resolution. The Committee would like to know what steps Uruguay intends to take in order to address this situation as soon as possible, considering that those institutions could be used for criminal purposes.***

Reply

Uruguay had informed the Committee in its previous reports that, although a legal framework was in place to exercise control over charitable organizations, there were some shortcomings that made such control difficult.

Accordingly, a number of steps have been taken to remedy the situation. Although these measures do not constitute a radical approach to the problem, they do go a long way towards tightening controls. A list of such measures follows.

Act No. 17,835, on the Strengthening of the System for the Prevention and Control of Money-Laundering and the Financing of Terrorism, significantly strengthened the legal powers of the State to implement the financial controls envisaged in resolution 1373 (2001). For example, institutions that operate in Uruguay (which are subject to the control of the relevant legal authorities) may freeze funds that could be considered suspicious. Thus, Uruguay adopted at an early stage the legal framework required to exercise the controls in question.

With regard to the controls that are applied to non-profit organizations, it should be noted that the authorities are prepared to take action if reports are received from domestic or external sources.

Mechanisms are also in place to ensure oversight and control of bank accounts and financial transfers.

No specific reports have been received regarding suspicious activities involving non-profit organizations operating in Uruguay.

The lists received from the United Nations and the United States Government following the attacks in the United States on 11 September 2001, and the corresponding information on financial controls, were disseminated to the law enforcement bodies of the Ministry of the Interior and the intelligence services. No financial transactions by the organizations and persons listed were found to have occurred in Uruguay.

With regard to the shortage of qualified personnel to perform the controls called for in resolution 1373 (2001), various activities have been undertaken to train public officials working at the institutions involved in controlling terrorist financing.

For example, Uruguay has a regional training centre that provides training on the prevention of money-laundering and the financing of terrorism. The centre, which operates in accordance with FAFT recommendations, has developed a training programme and has held a number of courses and seminars. Those held in

2005 include one conducted in Montevideo from 2 to 5 May 2005, in conjunction with the Inter-American Drug Abuse Commission (CICAD) of the Organization of American States (OAS), and another held in Rio de Janeiro from 17 to 20 May 2005, in coordination with the South American Financial Action Task Force Against Money Laundering (GAFISUD). The latter course focused specifically on controlling the financing of terrorism.

At both events, particular attention was devoted to Special Recommendation VIII of the Financial Action Task Force on Money Laundering (FATF) regarding controls on non-profit organizations, whose funds could be diverted to finance terrorist acts.

Coordination is currently being promoted between the various institutions that exercise financial control responsibilities with a view to improving the mechanisms for detecting possible transfers by non-profit organizations of funds intended for criminal purposes. The institutions involved include the Ministry of Economic and Financial Affairs, the Ministry of Education and Culture, the Central Bank and the Department of Taxation and Internal Audit of Uruguay. The Office of the Assistant Secretary in the Office of the President coordinates their work.

1.4 ***Question: With regard to the response given in paragraph 1.9 of Uruguay's third report, relating to the obligations contained in paragraphs 2 (d) and (e) of the resolution, the Committee requests Uruguay to provide more detailed clarification on this matter.***

Reply

A number of legal provisions contained in Uruguay's body of laws have been consolidated and expanded in Act. No. 17,835, on the Strengthening of the System for the Prevention and Control of Money-Laundering and the Financing of Terrorism. The adoption of the Act thus ensures compliance with the obligations established in paragraphs 2 (d) and (e) of resolution 1373 (2001) of the United Nations Security Council. Articles 14, 15 and 16 of the Act, which criminalize terrorist acts and the financing of terrorism, deserve to be singled out in this body of laws.

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Letter dated 5 July 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 9 August 2004 (S/2004/663). The Counter-Terrorism Committee has received the attached fourth report from Nepal submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

05-41634 (E) 030805

Annex

Letter dated 5 July 2005 from the Chargé d'affaires a.i. of the Permanent Mission of Nepal to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to forward herewith the fourth report prepared by His Majesty's Government of Nepal in pursuance of paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Arjun Bahadur **Thapa**
Chargé d'affaires a.i.
Minister Plenipotentiary
Deputy Permanent Representative

Enclosure

Fourth report by Nepal on the implementation of Security Council resolution 1373 (2001)

1. Implementation measures

Effectiveness in the protection of the financial system

1.1. **The CTC notes that Nepal, in its third report (at page 3) reported on the steps that it intends to take in order to meet the requirements of subparagraph 1(b) of the Resolution. The CTC would be grateful to receive an outline of the steps and a progress report on the enactment of the following:**

- **Legislation that would bring all banks and other financial institutions under the control of the Government;**
- **Legislation that would comply with the obligations emanating from Nepal's bilateral and multilateral commitments;**
- **Draft Bill on Combating Money Laundering; and**
- **Legislation that would oblige banks and financial institutions to report transactions beyond a particular threshold (page 4 of the third report).**

HMG's response:

Banks and Financial Institutions Ordinance 2004 has been promulgated since February 2004, which brings all commercial banks and financial institutions under the purview of the Government. The provisions of this Ordinance have sought to comply with the obligations emanating from Nepal's bilateral and multilateral commitments for promoting effectiveness in the protection of financial system (especially articles 74, 79 (g and i), 80 and 83).

The deliberations of the draft Bill on Combating Money Laundering among the relevant HMG agencies are underway. The proposed bill seeks to oblige the banks and financial institutions to regularly report on any transactions beyond a threshold amount, including the suspicious ones.

1.2 **Effective implementation of sub-paragraph 1 (b) of the Resolution requires a State to have in place provisions specifically criminalizing the wilful provision or collection of funds by its nationals or in its territory, by any means directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used to carry out terrorist acts. For an act to constitute an offence as described above, it is**

not necessary that the funds actually be used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts which are to be criminalized can be committed even if:

- The only related terrorist act takes place or is intended to take place outside the country;
- No related terrorist act actually occurs or is attempted;
- No transfer of funds from one country to another takes place
- The funds are legal in origin.

Nepal indicates in its supplementary report (at page 4) that in terms of section 3 (1) of the Terrorism and Disruptive Activities Act 2058 (2002), no one can forcibly collect funds including in kind contributions. This provision does not fully meet the requirements of sub-paragraph 1 (b) of the Resolution as it only criminalizes the forcible collection of funds. The CTC would be grateful for an indication from Nepal of steps it intends taking in order also to meet fully the other requirements of this sub-paragraph of the Resolution.

HMG's response

As reported in its third report, the draft bill on combating money laundering seeks to address matters relating to criminalizing the forcible or willful collection of money earned through corruption, drug trafficking, trafficking in persons and arms and ammunition, any other means deemed to be illegal.

1.3 Effective implementation of sub-paragraph 1 (a) of the Resolution requires States to prevent and suppress the financing of terrorist acts. In this context, States are required, *inter alia*, to regulate alternative money remittance services such as *hawala* (Hindi). The CTC would be grateful to know what steps Nepal intends to take in order to regulate this sector and thus to meet fully the requirements of this sub-paragraph of the Resolution.

HMG's response

As Central Bank, Nepal Rastra Bank (NRB) has initiated certain policy measures to ensure lawful remittance services for the lawful earnings of Nepalese nationals abroad. For this NRB has started issuing license to the authorized Nepalese money exchanges to undertake such transactions abroad. Successful cases of this experience are being studied for possible replication as needed.

1.4 **Effective implementation of sub-paragraph 1 (a) of the Resolution requires a State to impose an obligation on banks and financial institutions to detect and report suspicious financial transactions to the relevant authorities. The CTC would be grateful to know of the steps that Nepal intends to take in order to meet fully the requirements of this sub-paragraph of the Resolution.**

HMG's response

The draft bill on combating money laundering intends to incorporate the provision of reporting suspicious financial transactions to the relevant authorities.

Moreover, Section 48 (3) of the Banks and Financial Institutions Ordinance, 2004 provides that a licensed institution must not provide any help to any person who has deposited in a deposit account funds earned by him/her through illegal means to hide, convert, pay or transfer such funds or to hide or lie about the origin or source thereof or to do anything for that purpose, in order to protect him/her from legal actions. In case any licensed institution learns or suspects that any such action has been taken, it must forthwith furnish particulars thereof to the Rastra Bank or to any other agency connected with the task of controlling deflection of currency.

1.5 **Sub-paragraph 1 (c) of the Resolution requires a State to freeze without delay the funds, financial assets or economic resources of individuals and entities, both resident and non-resident, who commit or attempt to commit, or participate in or facilitate the commission of terrorist acts. It should be noted that for this purpose, the funds and other financial resources need not be proceeds of crime, but could be legal in origin and still be used for terrorism either within or outside the territory of Nepal. The CTC would be grateful to know if Nepal can freeze funds linked to terrorism at the request of another State.**

HMG's response

Section 80 (1 and 2) of the Banks and Financial Institutions Ordinance 2004 has the following provision in this regard:

(1) The NRB may direct a licensed institution at any time to freeze any account opened in the concerned licensed institution in the name of any individual, firm, company or institution in such a manner as to prevent the withdrawal or transfer of funds in any way from that account in connection with investigations into any type of crime or in connection with protecting the national interests by checking national or international terrorist activities or organized crimes.

(2) It shall be the duty of the concerned licensed institution to abide by the directives issued by the Rastra Bank under Sub-Section (1).

1.6 **Sub-paragraph 2 (b) of the Resolution requires States to take the necessary steps to prevent the commission of terrorist acts, including by the provision of early warning to other States using exchange of information. The CTC would be grateful to receive the names of States with which Nepal exchanges information by means of early warning of anticipated terrorist activities.**

HMG's response

Nepal is founding member of South Asian Association for Regional Cooperation (SAARC), which comprises India, Bhutan, Bangladesh, the Maldives, Pakistan, Sri Lanka and Nepal. The SAARC Regional Convention on Suppression of Terrorism, 1987 and Its Additional Protocol, 2004 have provisions for exchange of information, intelligence and expertise among its Member States with a view to preventing terrorist activities.

1.7 **Sub-paragraphs 3 (d) and (e) of the Resolution call upon States to become parties to and fully implement the 12 international conventions and protocols relating to terrorism. In its reply to these sub-paragraphs, Nepal indicated in its supplementary report (at page 6) that it is in the process of becoming a party to the International Conventions for the Suppression of Terrorist Bombings and the International Convention for the Suppression of Financing of Terrorism. Nepal further indicated in its third report (at page 5) that it is presently studying the other relevant instruments. The CTC would appreciate receiving a progress report on the ratification of, or accession to the said conventions and protocols to which Nepal is not yet a party, and the**

incorporation of the provisions of the conventions and protocols to which it is already party into its domestic laws.

HMG's response

The administrative procedures for becoming a party to the remaining international instruments on terrorism, including the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of Financing of Terrorism are underway. The Constitution of Nepal provides that accession/ratification of international instruments requires ratification by the Parliament. Therefore, action towards ratification/accession may be possible once the Parliament comes into being.